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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,661	07/05/2005	Edgar Ivo Maria van der Heijden	903-125 PC'D/US	7862
23869 7590 12/05/2008 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
NICOLAS, FREDERICK C				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
12/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/518,661

**Applicant(s)**VAN DER HEIJDEN, EDGAR IVO  
MARIA**Examiner**

Frederick C. Nicolas

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 56-69, 71-74 and 82-105 is/are pending in the application.
- 4a) Of the above claim(s) 82-105 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-69 and 71-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 56-69, 71-74 and 82-105 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are also objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the decreasing and increasing cross-sectional area of the first and second piston chambers and the filling unit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. Applicant is warned about the insertion of new matter.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 56-69,71-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- Claim 56 recites the limitation "the respective outlets" in line 9 and "the uncoupled state" in line 12. There is insufficient antecedent basis for this limitation in the claim.

II- In claim 56, line 9, "which pistons" is positively recited for a second time. This renders the claims confusing as it raises issues of double inclusion.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 56, 58-59, 67-69,71-74 are rejected under U.S.C. 102(b) as being anticipated by Weag 5,224,827.

Weag discloses a dispensing unit for dispensing two fluid substances as seen in Figure 1, which comprises a pump assembly having a first pump (5) and a second pump (6), actuable by a common, manually operable operating means (3) to

simultaneously dispense the two fluid substances, and a reservoir assembly (7) for holding the two fluid substances, the reservoir assembly comprising two integral reservoirs (8,9), which are each provided with an outlet (30) at an outlet side and are each delimited by a movable piston (16,17) on the side remote from the outlet, the reservoir assembly and the pump assembly are separate assemblies which are couplable to one another, in such a manner that in the uncoupled state each reservoir is filled through the outlet of the reservoir, after which the pump assembly and the reservoir assembly are coupled to one another as seen in Figure 1 and further, the applicant is advised that any action following the words "for" or "in such a manner" and any word that end with "able" in the claims indicates an intended use for the product and does not limit the structure of the product in the claims. Therefore, the examiner is giving no patentable weight to any intended use/functional limitations, since the reference of Weag discloses all the structure limitations, then, Weag is capable of performing all of the intended use/functional limitations in claim 56, a cover (28,29), a connecting fit (2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weag 5,224,627 in view of Varlet 5,237,797.

Weag has taught all the features of the claimed limitation except that each piston prior to filling of the respective reservoir is located in a filling position close to the outlet. Varlet teaches that the filling position of a piston is close to the outlet (Fig. 22).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have a filling position close to the outlet in order to prevent the ingress of air as taught by Varlet (abstract and col. 1, ln 19).

8. Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weag 5,224,627 in view of WO 99/25627 to van der Heijden (van der Heijden).

Weag has taught all the features of the claimed invention except that the diameter or cross section of the first and/or second reservoir decreases in the direction of the outlet side over at least a section of the length of the reservoir. van der Heijden teaches a decreasing diameter in the direction of the outlet side (p. 4, ln 14-15, 20-22, and 25-27).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have a decreasing diameter to avoid the adverse consequence of creep as taught by van der Heijden (p. 4, ln 17).

***Allowable Subject Matter***

9. Claims 64-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if rewritten to overcome the rejections under 35 U.S.C. 112.

***Response to Arguments***

10. Applicant's arguments filed 8/14/2008 have been fully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frederick C. Nicolas/  
Primary Examiner, Art Unit 3754